

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

NICOLE DENISE GRIGGS,

Plaintiff,

v.

LAS VEGAS METRO POLICE
DEPARTMENT,

Defendant.

Case No. 2:21-cv-02117-RFB-EJY

ORDER

and

REPORT AND RECOMMENDATION

Re: ECF No. 1 and 1-2

Pending before the Court is Plaintiff's Amended Complaint filed in response to the Court's December 6, 2021 Order (ECF No. 3).

I. Screening the Amended Complaint

In screening a complaint, a court must identify cognizable claims and dismiss all claims that are frivolous, malicious, fail to state a claim on which relief may be granted or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief may be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the Court applies the same standard under § 1915(e)(2) when reviewing the adequacy of this Amended Complaint. *Watson v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012).

Under Federal Rule of Civil Procedure 8(a), a pleading that states a claim for relief must contain "a short and plain statement of the claim showing that the pleader is entitled to relief," and "a demand for the relief sought." To survive § 1915(e)(2) review, a complaint must "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). All allegations of material fact are taken as true and construed in the light most favorable to the plaintiff. *Wyer Summit P'ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). Nonetheless, a plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The Court liberally

1 construes pro se complaints and may only dismiss them “if it appears beyond doubt that the plaintiff
2 can prove no set of facts in support of his claim which would entitle him to relief.” *Nordstrom v.*
3 *Ryan*, 762 F.3d 903, 908 (9th Cir. 2014).

4 Finally, all or part of a complaint filed by a person proceeding under § 1915 may be dismissed
5 if the claims lack an arguable basis either in law or in fact. This includes claims based on legal
6 conclusions that are untenable (e.g., claims against defendants who are immune from suit or claims
7 of infringement of a legal interest which clearly does not exist), as well as claims based on fanciful
8 factual allegations (e.g., fantastic or delusional scenarios). *See Neitzke v. Williams*, 490 U.S. 319,
9 327-28 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

10 **II. Plaintiff’s Amended Complaint**

11 Plaintiff names the Las Vegas Metropolitan Police Department (“LVMPD” or “Metro”) as
12 her only apparent Defendant. ECF No. 4. She alleges that in 2017 an unidentified Metro male
13 officer patted her down “palming” her breasts in violation of law. Plaintiff says this occurred outside
14 her apartment in the presence of the former Director of the Department of Corrections for the State
15 of Nevada, James Dzurenda, who was with her on that date and called the police after she and Mr.
16 Dzurenda encountered a chemically impaired neighbor coming out of his apartment.

17 Plaintiff next alleges she was standing in a CVS parking lot in July 2018 when an LVMPD
18 officer arrived after she supposedly called about a car accident she only witnessed. Mr. Dzurenda
19 is alleged to have appeared at this scene too. Plaintiff states that LVMPD kidnapped her, falsely
20 imprisoned her for driving under the influence (“DUI”), and lied to the Nevada Department of Motor
21 Vehicles (the “Nevada DMV”) stating she was pulled over for suspicion of DUI. Plaintiff stated
22 that the Nevada DMV suspended her driver’s license after she tested positive for driving under the
23 influence of cannabis and placed a two year national hold on her ability to obtain a new license. As
24 a result of the national hold on her license, Plaintiff states she could not renew her license in Florida
25 and was ticketed in 2021 as a result.

26 Plaintiff states she lives in her van and has many health problems for which she has had
27 difficulty obtaining care as the result of stress arising from her interactions with the LVMPD.
28

1 Plaintiff also states she lost her best friend, a cat, as the result of all her stress. Plaintiff is seeking
2 \$500,000,000 in damages for her losses.

3 **III. Analysis of the Amended Complaint**

4 As explained in the Court's original Order and Report and Recommendation, the U.S.
5 Supreme Court decision in *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658 (1978),
6 allows Plaintiff to recover from a municipality and local governmental entities under § 1983 for
7 violations of constitutional rights; however, she must allege one of three theories to do so. *Id.*;
8 *Clouthier v. Cnty. of Contra Costa*, 591 F.3d 1232, 1249 (9th Cir. 2010). "First, a local government
9 may be held liable 'when implementation of its official policies or established customs inflicts the
10 constitutional injury.'" *Id.* (quoting *Monell*, 436 U.S. at 708 (Powell, J. concurring)). "Second,
11 under certain circumstances, a local government may be held liable under § 1983 for acts of
12 omission, when such omissions amount to the local government's own official policy." *Id.* "Third,
13 a local government may be held liable under § 1983 when 'the individual who committed the
14 constitutional tort was an official with final policy-making authority' or such an official 'ratified a
15 subordinate's unconstitutional decision or action and the basis for it.'" *Id.* at 1250 (quoting *Gillette*
16 *v. Delmore*, 979 F.2d 1342, 1346-47 (9th Cir. 1992)). Plaintiff again fails to allege any facts
17 suggesting that an official policy or custom of the LVMPD or any conduct amounted to the
18 LVMPD's official policy resulted in a constitutional injury. Plaintiff also does not allege that the
19 acts, as described, were committed by an official with final policy making authority. For these
20 reasons, Plaintiff's Amended Complaint fails to state a claim against LVMPD under *Monell*.

21 Further, the Court acknowledges Plaintiff's *pro se* status, but still finds Plaintiff's allegations
22 are a bit fantastic as evidenced by the repeated references to James Dzurenda, the allegations that
23 LVMPD officers committed perjury, and allegations regarding incidents with other law enforcement
24 agencies in the U.S. Plaintiff also alleges relatives, all with high level positions in the U.S. Military,
25 Department of Defense, and Defense Logistics Agency, are abusing their powers, which, Plaintiff
26 states is consistent with a statement made by Jerry Spence "in his book 'Police State.'" Plaintiff's
27 claims for relief, including such things as theft of medical products and domestic terrorism, further
28 support the Court's concerns.

1 However, and importantly, even if the Court sets aside Plaintiff's fantastic and implausible
 2 allegations, Plaintiff's Fourth Amendment claims against the LVMPD and its officers are time
 3 barred. That is, construing Plaintiff's claims as alleging a Fourth Amendment violation for
 4 unreasonable search of her person in 2017, and unlawful seizure without a warrant in 2018, Plaintiff
 5 did not file her original complaint in November 2021. ECF Nos. 1, 5 at 2-3. While Section 1983
 6 does not contain its own statute of limitations, federal courts apply the statute of limitations
 7 applicable to personal injury claims in the forum state. *Wilson v. Garcia*, 471 U.S. 261, 279-80
 8 (1985); *Pouncil v. Tilton*, 704 F.3d 568, 573 (9th Cir. 2012). In Nevada, the statute of limitations
 9 for personal injury claims is two years. NRS 11.190(4)(e). Thus, Plaintiff's Fourth Amendment
 10 claims are barred by the two year statute of limitations and these claims must be dismissed.

11 Plaintiff further alleges she was denied a driver's license by the State of Florida in February
 12 2021, and received a ticket as a result of this denial. Assuming the denial of a driver's license is a
 13 separate harm cognizable under the U.S. Constitution, this claim would be brought as a substantive
 14 due process claim. To prevail on a substantive due process claim under Section 1983, a plaintiff
 15 must demonstrate the (1) deprivation of a protected life, liberty, or property interest; and (2) that the
 16 defendant engaged in "conduct that 'shock[s] the conscience and offend[s] the community's sense
 17 of fair play and decency.'" *Regents of the University of California v. U.S. Department of Homeland*
 18 *Security*, 908 F.3d 476, 514, 518 (9th Cir. 2018). However, the underlying basis of this claim
 19 requires the Court, at a minimum, to find the alleged irrational and wholly incredible allegations
 20 regarding repeated bizarre conduct by LVMPD officers plausible, which the Court does not do.
 21 *Denton v. Hernandez*, 504 U.S. 25, 33 (1992); *Neitzke*, 490 U.S. at 327-28; *McKeever*, 932 F.2d at
 22 798. Indeed, the district court has the authority to dismiss a case *sua sponte* without notice to the
 23 plaintiff when she "cannot possibly win relief." *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 638
 24 (9th Cir. 1998).

25 **IV. Recommendation**

26 Accordingly, IT IS HEREBY RECOMMENDED that Plaintiff's Fourth Amendment claims
 27 asserted in her Amended Complaint (ECF No. 4) be dismissed with prejudice as her claims are time
 28 barred.

1 IT IS FURTHER RECOMMENDED that Plaintiff's substantive due process claims for
2 denial of a drivers license by the State of Florida be dismissed with prejudice as asserting failing to
3 state a claim upon which relief may be granted.

4 IT IS FURTHER RECOMMENDED that this case be closed by the Clerk of Court and
5 judgment entered in favor of Defendants.

6 Dated this 30th day of March, 2022.

7
8 
9 ELAYNA J. YOUCHAK
10 UNITED STATES MAGISTRATE JUDGE

11 **NOTICE**

12 Pursuant to Local Rule IB 3-2, any objection to this Report and Recommendation must be in writing
13 and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that
14 the courts of appeal may determine that an appeal has been waived due to the failure to file objections
15 within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This Circuit has also held that
16 (1) failure to file objections within the specified time and (2) failure to properly address and brief
17 the objectionable issues waives the right to appeal the District Court's order and/or appeal factual
18 issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991);
19 *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).